



HENRY McMASTER
ATTORNEY GENERAL

September 30, 2008

Marci Andino, Executive Director
State Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Ms. Andino:

In a letter to this office you requested an opinion regarding campaign literature and materials such as campaign t-shirts, hats, pins, etc. being displayed or worn in an absentee precinct and/or other polling places. You indicated that it has been the policy of the State Election Commission not to allow individuals to wear these items into a polling place and poll managers are instructed to ask a person to cover or remove the item. You have questioned whether this policy is consistent with state law.

You particularly referenced the provisions of S.C. Code Ann. § 7-25-180 which states that

(A) It is unlawful on an election day within two hundred feet of any entrance used by the voters to enter the polling place for a person to distribute any type of campaign literature or place any political posters. The poll manager shall use every reasonable means to keep the area within two hundred feet of any such entrance clear of political literature and displays, and the county and municipal law enforcement officers, upon request of a poll manager, shall remove or cause to be removed any material within two hundred feet of any such entrance distributed or displayed in violation of this section.

(B) A candidate may wear within two hundred feet of the polling place a label no larger than four and one-fourth inches by four and one-fourth inches that contains the candidate's name and the office he is seeking. If the candidate enters the polling

place, he may not display any of this identification including, but not limited to, campaign stickers or buttons. (emphasis added).

A prior opinion of this office dated August 9, 1974 dealt with a similar question regarding the predecessor statute to Section 7-25-180, former Section 23-658.2, as to what campaign literature is prohibited from being displayed within two hundred feet of the polls. It referenced that the statute “expressly forbids placing political posters or political literature and displays within two hundred (200) feet of a polling place.” The opinion concluded that

...any material which would advertise a candidate, i.e., name tags, bands on hats, bumper stickers, etc. would come within the prohibition of this statute and could not be displayed within two hundred (200) feet of the polls.

The opinion further stated that

[t]he statute does not deal specifically with candidates or their workers campaigning within two hundred (200) feet of the polls. However, it would be permissible for a candidate to stand inside the two hundred (200) feet and shake hands with persons coming to vote. It would be permissible for the person to wear a simple name badge if the badge did not in any way advertise his political campaign.

Other prior opinions of this office have made similar conclusions as to the display of political material within two hundred feet of a polling place. See: Ops. Atty. Gen. dated November 2, 1970 (statute relating to campaign activities within 200 feet of polling place are aimed at the distribution of literature); May 29, 1970 (unlawful to place campaign poster on telephone pole within two hundred feet of polling place); May 16, 1968 (“Candidates or their supporters may not display or distribute literature or campaign posters within 200 feet of the polling place....”). See also: Douan v. Charleston County Council, 357 S.C. 601, 614, 594 S.E.2d 261, 267 (2003) (“...we can find no logical distinction which would allow partisan, campaign literature drafted by a governmental entity to be distributed within 200 feet of a polling place on election day when the same literature distributed by a private party would not be allowed pursuant to § 7-25-180(A).”). In its decision in Burson v. Freeman, 504 U.S. 191 (1992), the United States Supreme Court held that a Tennessee statute which prohibited the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place was constitutional in preventing both voter intimidation and election fraud.

Consistent with the above, in the opinion of this office, campaign literature and materials such as campaign t-shirts, hats, pins, etc. should not be displayed or worn in an absentee precinct and/or other polling places. This office is, therefore, in agreement with the policy of the State

Ms. Andino
Page 3
September 30, 2008

Election Commission to not allow individuals to wear these items into a polling place and that poll managers be instructed to ask individuals to cover or remove such items.

If there are any questions, please advise.


Yours very truly,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General